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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,653	04/04/2006	Richard Kolak	60469254OT5282	7623
64779	7590	05/22/2009	EXAMINER	
CARLSON GASKEY & OLDS			KRUER, STEFAN	
400 W MAPLE STE 350			ART UNIT	PAPER NUMBER
BIRMINGHAM, MI 48009			3654	
MAIL DATE		DELIVERY MODE		
05/22/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* RICHARD KULAK and MICHAEL TRACEY

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Application No. 10/574,653  
Technology Center 3600

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Mailed: May 22, 2009

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Before KRISTA ZELE *Deputy Chief Appeals Administrator*  
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on May 5, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S CONSIDERATION OF REPLY BRIEF**

A Reply Brief was filed on April 21, 2009, in response to the Examiner's Answer mailed March 17, 2009.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed May 1, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answers requires a Director or designees approval.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Communication mailed May 1, 2009 April 21, 2009;
- 2) generate and mail either:

a) a revised Communication properly acknowledging to the Reply

Brief dated April 21, 2009 in accordance with MPEP§ 1208, part II.;

OR

- b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/alw

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